

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JOEY A. GARCIA,

Case No.: 3:25-cv-00038-MMD-CSD

**Plaintiff**

Order

V.

Re: ECF Nos. 1, 1-1

JEREMY TAFELMEYER, et al.

## Defendants

Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF Nos. 1, 18) and complaint (ECF No. 1-1).

## I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

“[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

1 An inmate submitting an application to proceed IFP must also “submit a certificate from  
2 the institution certifying the amount of funds currently held in the applicant’s trust account at the  
3 institution and the net deposits in the applicant’s account for the six months prior to the date of  
4 submission of the application.” LSR 1-2; *see also* 28 U.S.C. § 1915(a)(2). If the inmate has been  
5 at the institution for less than six months, “the certificate must show the account’s activity for  
6 this shortened period.” LSR 1-2.

7 If a prisoner brings a civil action IFP, the prisoner is still required to pay the full amount  
8 of the filing fee. 28 U.S.C. § 1915(b)(1). The court will assess and collect (when funds exist) an  
9 initial partial filing fee that is calculated as 20 percent of the greater of the average monthly  
10 deposits or the average monthly balance for the six-month period immediately preceding the  
11 filing of the complaint. 28 U.S.C. § 1915(b)(1)(A)-(B). After the initial partial filing fee is paid,  
12 the prisoner is required to make monthly payments equal to 20 percent of the preceding month’s  
13 income credited to the prisoner’s account. 28 U.S.C. § 1915(b)(2). The agency that has custody  
14 of the prisoner will forward payments from the prisoner’s account to the court clerk each time  
15 the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

16 Plaintiff’s certified account statement indicates that his average monthly balance for the  
17 last six months was \$36.97, and his average monthly deposits were \$160. (ECF No. 18.)

18 Plaintiff’s application to proceed IFP is granted. Plaintiff is required to pay an initial  
19 partial filing fee in the amount of \$32 (20 percent of \$160). Thereafter, whenever his prison  
20 account exceeds \$10, he must make monthly payments in the amount of 20 percent of the  
21 preceding month’s income credited to his account until the \$350 filing fee is paid.

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## II. SCREENING

### A. Standard

Under the statute governing IFP proceedings, “the court shall dismiss the case at any time if the court determines that-- (A) the allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

In addition, under 28 U.S.C. § 1915A, “[t]he court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). In conducting this review, the court “shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint-- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b)(1)-(2).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) and 28 U.S.C. § 1915A(b)(1) track that language. As such, when reviewing the adequacy of a complaint under these statutes, the court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

22 The court must accept as true the allegations, construe the pleadings in the light most  
23 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*,

1 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less  
2 stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9  
3 (1980) (internal quotation marks and citation omitted).

4 A complaint must contain more than a “formulaic recitation of the elements of a cause of  
5 action,” it must contain factual allegations sufficient to “raise a right to relief above the  
6 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading  
7 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]  
8 a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a  
9 plaintiff should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at  
10 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

11 A dismissal should not be without leave to amend unless it is clear from the face of the  
12 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
13 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
14 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

15 **B. Plaintiff's Complaint**

16 Plaintiff's complaint names Lyon County Sheriff's Deputies Tafelmeyer and Bell as  
17 defendants. He alleges that Deputy Bell ran and attacked him while he was standing still on the  
18 side of the highway, and he was slammed into the jagged rocks and glass while placed into  
19 restraints. Deputy Tafelmeyer kneed him in the face, and strangled his neck while pushing his  
20 face into the ground. Bell then rolled Plaintiff partially to the side to search Plaintiff and punched  
21 him hard in the sternum. Plaintiff avers that he posed no threat to the deputies. He asserts claims  
22 of excessive force against these defendants. He also refers to the Cruel and Unusual Punishment  
23 Clause of the Eighth Amendment.

1       Claims of excessive force during an arrest or other seizure of a free citizen are evaluated  
2 under the Fourth Amendment and apply an "objective reasonableness" standard. *Graham v.*  
3 *Connor*, 490 U.S. 386, 395 (1989); see also *Smith v. City of Hemet*, 394 F.3d 689, 700 (9th Cir.  
4 2005) (en banc). Such claims do not arise under the Eighth Amendment, which applies to  
5 convicted inmates.

6 The court finds that Plaintiff states colorable excessive force claims against Tafelmeyer  
7 and Bell.

### **III. CONCLUSION**

9 (1) Plaintiff's IFP application (ECF No. 1) is **GRANTED**; however, within **30 DAYS**  
10 Plaintiff must pay, through NDOC, an initial partial filing fee in the amount of \$32. Thereafter,  
11 whenever his prison account exceeds \$10, he is required to make monthly payments in the  
12 amount of 20 percent of the preceding month's income credited to his account until the full \$350  
13 filing fee is paid. This is required even if the action is dismissed, or is otherwise unsuccessful.  
14 The Clerk must **SEND** a copy of this Order to the attention of **Chief of Inmate Services for the**  
15 **Nevada Department of Corrections** at [formapauperis@doc.nv.gov](mailto:formapauperis@doc.nv.gov).

16|| (2) The Clerk will FILE the complaint (ECF No. 1-1).

17 (3) The Complaint will **PROCEED** with the Fourth Amendment excessive force claims  
18 against Tafelmeyer and Bell.

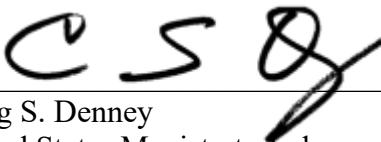
19 (4) The Clerk of Court shall **ISSUE** summonses for Defendants Tafelmeyer and Bell,  
20 **and deliver the same**, to the U.S. Marshal for service. The Clerk also shall also **SEND** sufficient  
21 copies of the complaint and this Order to the U.S. Marshal for service on the Defendants. The  
22 Clerk shall **SEND** to Plaintiff 2 USM-285 forms. Plaintiff will have **21 days** within which to  
23 furnish to the U.S. Marshal the required USM-285 forms with relevant information as to each

1 defendant on each form at 400 S. Virginia Street, 2nd floor, Reno, Nevada 89501. Within **20**  
2 **days** after receiving from the U.S. Marshal a copy of the USM-285 forms showing whether  
3 service has been accomplished, if any of the defendants were not served, and if Plaintiff wants  
4 service to be attempted again, he must file a motion with the court providing a more detailed  
5 name and/or address for service, or indicating that some other method of service should be  
6 attempted.

7 (5) Plaintiff is reminded that under Federal Rule of Civil Procedure 4(m), service must  
8 be completed within **90 days** of the date of this Order. If Plaintiff requires additional time to  
9 meet any of the deadlines set by the court, he must file a motion for extension of time under  
10 Local Rule 1A 6-1 *before* the expiration of the deadline, and the motion must be supported by a  
11 showing of good cause. A motion filed after a deadline set by the court or applicable rules will  
12 be denied absent a showing of excusable neglect.

13 **IT IS SO ORDERED.**

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15 Dated: July 28, 2025

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17 Craig S. Denney  
United States Magistrate Judge

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